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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 258 ✓  
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L. K. PERSON,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA.

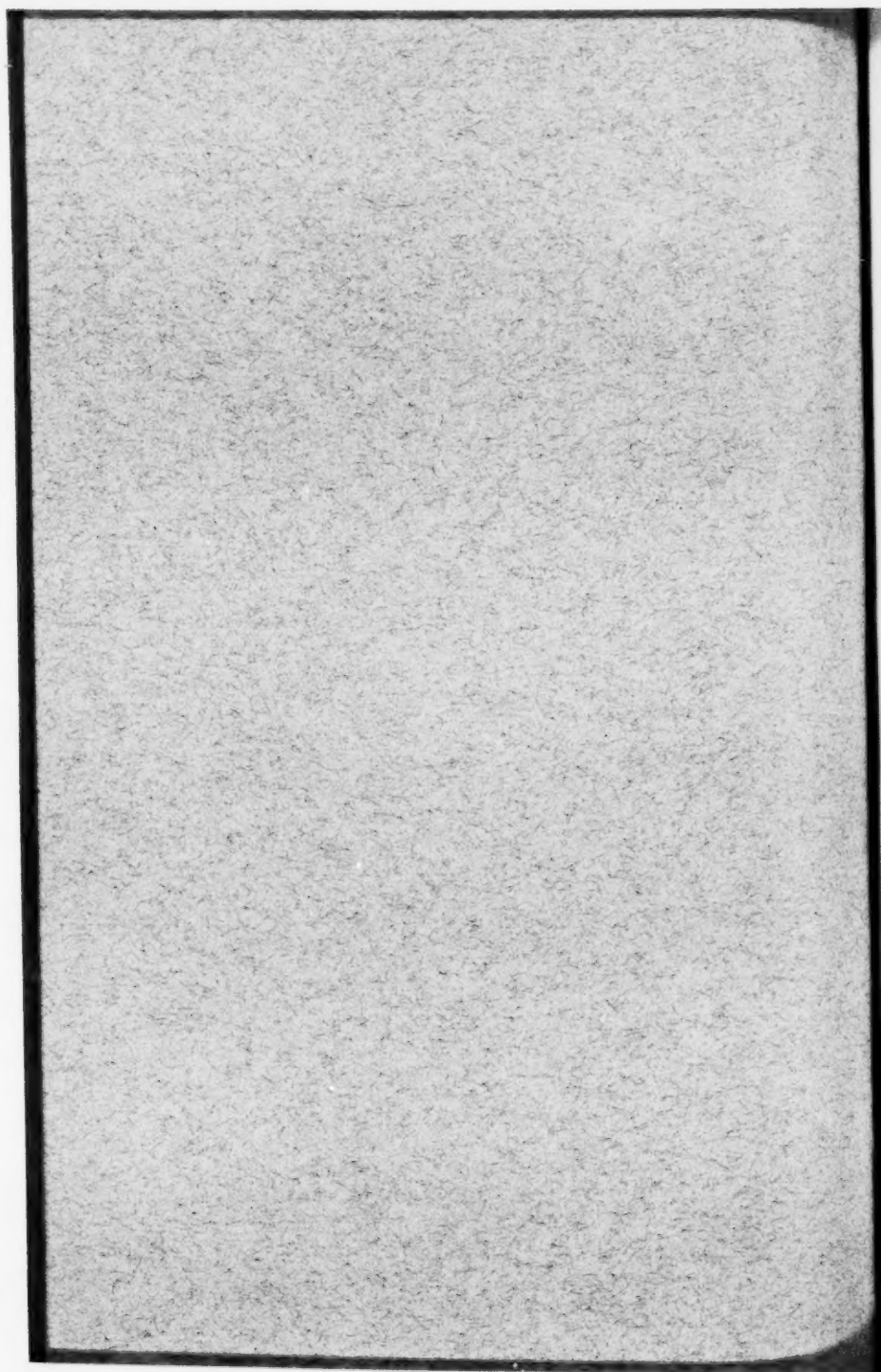
PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF AP-  
PEALS FOR THE EIGHTH CIRCUIT AND  
BRIEF THEREON.

L. K. PERSON,

*Attorney pro se.*



HELMS PRINTING CO., KEOSAUKEE



# INDEX.

## SUBJECT MATTER.

	Page
I. Petition for <i>Writ of Certiorari</i> .....	1
1. Statement of Matters Involved.....	2, 3
2. Jurisdiction .....	2
3. Questions presented .....	4, 5, 6
1. Laws of Arkansas applicable to note and mort- gage taken under Arkansas laws.....	4
2. Laches imputable to the United States when in court as a property owner, or is party to a negotiable instrument. ....	4, 5
3. Was the Mid-South Cotton Grower's Associa- tion petitioner's agent? If so, could they bind him so as to toll limitations by their pay- ment on note? .....	5
4. The Circuit Court of Appeals erred when they upheld summary judgment. ....	5
4. Reasons why <i>writ should be allowed</i> . ....	6
1. The Circuit Court of Appeals decided a ques- tion of national importance upon which there is no decision in point. ....	6
3. Payment by an agent on a note does not toll limitations. ....	10
4. The Circuit Court of Appeals erred in uphold- ing the summary judgment. ....	10
5. Prayer and conclusion. ....	10
II. Supporting Brief .....	12
1. Opinion of the court below. ....	12
2. Jurisdiction .....	12
3. Facts .....	12
4. Points 1 and 2, limitations or laches.....	13
1. Authorities .....	13
2. Argument .....	14, 15
5. Point 3. Agency of Mid-South Cotton Grower's Association .....	16
6. Point 4. No admission of the admission of peti- tioner as to his execution of note and mortgage contained in his answer .....	16
7. Conclusion .....	16, 17

## AUTHORITIES.

### CASES CITED:

	Page
<i>United States v. Bank of Metropolis</i> , 15 Peters 377.....	7, 13
<i>Cotton v. United States</i> , 52 U. S. 228 .....	7, 13
<i>Cooke, et al., v. United States</i> , 91 U. S. 389 .....	7, 13
<i>Osborn v. United States Bank</i> , 9 Wheaton 737 .....	7, 13
<i>The Sloan Shipyards Corporation, et al., v. U. S. Shipping Board Emergency Fleet Corporation and the United States</i> , 258 U. S. 549 .....	7, 13
<i>Denver &amp; Rio Grande Railway Co. v. United States</i> , 241 Fed. 614 .....	8, 13
<i>Lois v. Clark</i> , 2 McLean 568 .....	8, 14
<i>Wheaton v. Peters</i> , 33 U. S. 591 .....	9, 14
<i>Cox v. Phelps</i> , 65 Ark. 1 .....	10, 16
<i>Brown v. State Bank</i> , 10 Ark. 134 .....	10
<i>Smith v. Farmers' &amp; Merchant's Bank</i> , 184 Ark. 235.....	10, 16
<i>Meisner v. Palter</i> , 170 Ark. 217 .....	10
<i>Taylor v. White</i> , 182 Ark. 433 .....	10, 16

### TEXT CITED:

25 A R. L. 62 .....	10, 16
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### STATUTES CITED:

Section 8933 <i>Pope's Digest of the Statutes of Arkansas</i> .....	4
Section 8934 <i>Pope's Digest of the Statutes of Arkansas</i> .....	4

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TO SAID HONORABLE COURT:

Petitioner, L. K. Person, a resident and citizen of the State of Arkansas, prays this Court for the Issuance of a *Writ of Certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit to review a final judgment and decision of said court entered the 16th day of May, 1940 (R. 25-29) affirming a decree of the District Court of the United States for the Western District of Arkansas entered on the 21st day of March, 1939 (R. 17). A petition for rehearing was duly filed and overruled on the 11th day of June, 1940 (R. 47). A Motion for Stay of Mandate

was duly filed, and an order granting same was issued on the 22nd day of June, 1940 (R. 49), so that this petition is filed within the time prescribed by the Act of February 13, 1925, on which jurisdiction rests.

The respondent, The United States of America, was plaintiff in the trial court on its plea therefor (R. 2), and was appellee in the Circuit Court of Appeals.

### **Statement of the Matters Involved.**

The petitioner, L. K. Person, executed his promissory note in the sum of \$3,000.00 payable to the Secretary of Agriculture, dated March 25, 1931, payable October 31, 1931, with interest at the rate of five per centum per annum. Payments on said note were made by L. K. Person by shipments of cotton to the Mid-South Cotton Grower's Association in the fall of 1931. Said association sold the cotton and applied the proceeds thereof on said note without any knowledge thereof on the part of L. K. Person. Said payments purported to be the proceeds of the sale of 36 bales of cotton. L. K. Person asks an accounting of said cotton in his "Motion of Defendant to Require Plaintiff to make Complaint More Definite and Certain" (R. 5) wherein he claims that he should have been credited with 76 bales of cotton instead of 36 bales as is shown in "Plaintiff's Reply to said Motion"

(R. 6). L. K. Person filed with the Circuit Court of Appeals a receipt from the payee showing that he owed a balance of \$1,000.00 on said note, and a letter from Milton B. Shroyer, Representative Emergency Crop and Feed Loan Office notifying him that he owed \$1,000.00, dated February 28, 1936 (R. 40). Said Complainant claims that a balance is owed on said note of \$1,914.57 (R. 3). Said Complaint was filed October 15, 1937. L. K. Person, after he was unable to secure an accounting for all his cotton by motions and demurrer, filed his Answer and plead limitations (R. 10), and filed as an exhibit thereto a copy of a crop mortgage executed by L. K. Person to the United States Department of Agriculture, executed March 25, 1931 (R. 13) as security for said loan.

Respondent in the complaint does not claim that L. K. Person made any payments on said note after 1931. It is claimed that the Mid-South Cotton Grower's Association made payments in 1934, and that the Association was L. K. Person's agent. Petitioner denies that the Association was his agent, and includes in his Answer a general denial of all material allegations of the Complaint.

**Respondent Prayed:**

"Judgment against the defendant, L. K. Person, in the sum of \$1,914.57, plus accrued and delinquent interest to October 1, 1937, in the sum of \$533.71, making a total of \$2,448.28, as of October 1, 1937, together with all costs hereinabout this cause expended, for which in due course let execution issue." (R. 3.)

Summary judgment was entered March 21, 1940, including therein, principal \$1,914.57 plus accrued interest \$704.88, making in the aggregate \$2,619.45, and costs (R. 17).

The Circuit Court of Appeals affirmed said judgment, but without taxation of costs (R. 29, 30).

### **Questions Presented.**

1. **Laws of Arkansas**—*Statutes of Limitations*; Sections 8933 and 8934 *Pope's Digest of the Statutes of Arkansas*. The rights of the United States with reference to private rights acquired in property (note and mortgage) are determined by the Laws of Arkansas.

2. **Laches is imputable to the United States.** When the United States came into court as a property owner, not as a sovereign to enforce a public right, they had no greater rights or privileges than other property owners and the Statute of Limitations runs against



them. When the United States became parties to commercial paper, they incur all the responsibilities of private persons under the same circumstances.

**3. Could the Mid-South Cotton Grower's Association bind petitioner by said payments?** Petitioner denies that the Association was his agent; that the acts of the Association were his acts; that said payments, by the Association, constituted an admission, by him, of the continued existence of the debt, and an implied promise to pay the remainder of the debt.

4. The Circuit Court of Appeals erred in upholding the summary judgment of the lower court upon the ground there was "no controverted issue of fact," saying:

"No such issues appear from the pleadings upon which the case was tried. The petition alleged the loan, certain payments thereon and sought judgment for the unpaid balance. The answer was a general denial and a plea of limitations. The answer admitted the note and mortgage. The only allegations in the answer referring to payments did not challenge the amounts but (for purposes of limitations) denied any payments had been made beyond a certain date." (R. 27, 28.)

The Court will notice in reading the Answer (R.

11), near the middle of the page, that petitioner used the following language with reference to the note and mortgage:

“Plaintiff’s Complaint states that said indebtedness therein alleged by plaintiff was due as follows:” In all of petitioner’s pleadings when the note and mortgage was referred to, plaintiff’s allegations were quoted, and petitioner admitted nothing. Since respondent failed to account for all of petitioner’s cotton, petitioner had the right to test the accuracy of respondent’s allegations in a trial thereof. Petitioner further had the right to place in evidence, the facts as to whether or not the United States was engaged in business.

### **Reasons Why Writ Should Be Allowed.**

1. The United States Circuit Court of Appeals for the Eighth Circuit has decided an important question of national concern upon which there has been no prior decision. Namely, the question, “When the United States become parties to commercial paper, they incur all the responsibilities of private persons under the same circumstances.”

Apparently, under these decisions, the United States is treated as in business when it becomes a party to

commercial paper, regardless of why it became such party thereto.

*United States v. Bank of Metropolis*, 15 Peters 377;

*Cotton v. United States*, 52 U. S. 228;

*Cooke, et al., v. United States*, 91 U. S. 389. In this decision, note page 398: "Laches is not imputable to the government, in its character as sovereign, by those subject to its domain. Still a government may suffer loss through the negligence of its officers. If it comes down from its position of sovereignty and enters the domain of commerce, it submits itself to the same laws that govern individuals there."

The laws pertaining to Government agricultural loans are listed in *U. S. Code Annotated* under the title of "Banks and Banking." Loaning money at 5% interest and taking notes and mortgages to secure same, places the government in business for profit.

In *Osborn v. U. S. Bank*, 9 Wheaton 737, the court said:

"The trade of banking is strictly a private concern."

*The Sloan Shipyards Corporation, et al., v. U. S. Shipping Board Emergency Fleet Corporation and the United States*, 258 U. S. 549, shows that when this vitally necessary governmental instrumentality en-

gaged in business, it was subject essentially to the same laws as private business. The court said: "The Emergency Fleet Corporation though an agent of the government, clothed with very great powers, was nevertheless answerable for its acts as was other corporations."

In support of petitioner's contention that the laws of Arkansas are controlling with reference to the promissory note and mortgage, executed in Arkansas — private rights obtained under Arkansas Law by the United States of America—petitioner first shows a decision in point rendered by our Eighth Circuit Court of Appeals:

In *Denver & R. G. R. Co. v. United States*, 241 Fed. 614, the court said: "While the government is bound by no statute of limitations in a suit brought by it as a sovereign to enforce a public right, when it sues a railroad company under Act of Colorado, for the value of timber on government land destroyed by fire it sues as a property owner with no greater rights or privileges than other property owners, and its action is barred when not brought within the time prescribed by the statute."

This decision quotes *Lorman v. Clarke*, 2 McLean 568, Fed. Cas. No. 8516: "No foreign principles at-

taches to the Federal Courts in exercising its powers within the state. It gives effect to the local law, under which the contract was made, or by virtue of which the right is asserted."

In *Wheaton v. Peters*, 33 U. S. 591, the court said:

"It is clear there can be no common law of the United States; the federal government is composed of 24 sovereign and independent states, each of which may have its local customs, usages, and common laws; there is no principle which prevades the Union, nad has the authority of law, that is not embodied in the Constitution or laws of the union. The common law could only be made a part of our system by legislative adoption. When a common-law right is asserted, we look to the laws of the state in which the controversy originated."

**3. Could the Mid-South Cotton Grower's Association bind appellant by said payment in tolling limitations?**

Appellant claims that said association was not his agent; that the acts of the association were not his acts; that said payment did not constitute an admission by petitioner of the continued existence of the debt, the correctness thereof, and an implied promise to pay the debt.

25 A. L. R. 62;

*Cox v. Phelps*, 65 Ark. 1;

*Brown v. State Bank*, 10 Ark. 134;

*Smith v. Farmer's & M. Bank*, 184 Ark. 235;

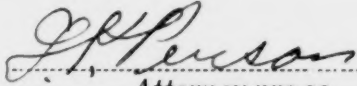
*Meisner v. Palter*, 170 Ark. 217.

In *Taylor v. White*, 182 Ark. 433, the court shows that application of the proceeds of mortgaged property to a debt by the payee, does not toll limitations.

4. Petitioner did not admit, in his answer, except possibly by implication, his execution of the note and mortgage.

WHEREFORE, Petitioner respectfully prays that a writ of *certiorari* be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Eighth Circuit commanding that court to certify and send to this court for review and determination a full and complete transcript of the record and all proceedings in the Cause entitled *L. K. Person, Appellant, v. United States of America, Appellee*, numbered 11,508 Civil, on its docket, and that the judgment and decree of said Circuit Court of Appeals may be reversed or remanded for trial by this

Honorable Court, and that Petitioner have such other  
and further relief as may seem meet and just.

  
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